United States Court of Appeals
for the Second Circuit

APPELLEE'S APPENDIX

ORIGINAL

75-2088

United States Court of Appeals

For the Second Circuit.

MEIR KAHANE,

Plaintiff-Petitioner-Appellee,

-against-

NORMAN CARLSON Director of the Federal Bureau of Prisons, LAWRENCE TAYLOR, Warden of the New York Metropolitan Correctional Center, and MATTHEW WALSH, Director of the New York Community Treatment Center,

Defendants-Respondents-Appellants.

On Appeal From The United States District Court For The Eastern District Of New York

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APPELLEE'S APPENDIX

BARRY IVAN SLOTNICK
Attorney for Appellee
233 Broadway
New York, N.Y. 10007
(212) WOrth 4-3200

B
P/S

Dick Bailey Printers • P.O. Box X, Staten Island, N.Y. 10302 • Tel.: (212) 447-5358

5

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

PLAINTIFFS

MEIR KAHANE

DEFENDANTS

NORMAN CARLSON, Director, Federal Bureau of Prisons, and

MATTHEW WALSH, Complex Director, Federal Community Treatment Center ("CTC")

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

BARRY IVAN SLOTNICK
233 Broadway
Forty-fourth Floor
New York City, New York 10007
(212) 233-5390

ATTORNEYS (IF KNOWN)

BASIS OF JURISDICTION (PLACE AN ☒ IN ONE BOX ONLY)

☐1 U.S. PLAINTIFF ☒2 U.S. DEFENDANT ☐3 FEDERAL QUESTION (U.S. NOT A PARTY) ☐4 DIVERSITY

IF DIVERSITY, INDICATE RESIDENCE BELOW.

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

28 USC §1361 - MANDAMUS; To require the defendants to act in accordance with the First and Eigth Amendments to the United States Constitution, as regarding the plaintiff, a prisoner under their custody.

NATURE OF SUIT (PLACE AN ☒ IN ONE BOX ONLY)

CONTRACT
☐110 INSURANCE
☐120 MARINE
☐130 MILLER ACT
☐140 NEGOTIABLE INSTRUMENT
☐150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGEMENT
☐190 OTHER CONTRACT
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☐330 FEDERAL EMPLOYERS' LIABILITY
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☐380 OTHER PERSONAL PROPERTY DAMAGE
☐385 PROPERTY DAMAGE PRODUCT LIABILITY

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☐442 JOBS
☐443 ACCOMMODATIONS
☐444 WELFARE
☐440 OTHER CIVIL RIGHTS

PRISONER PETITIONS
☐510 VACATE SENTENCE (2255)
☐520 PAROLE BRD REVIEW
☐530 HABEAS CORPUS
☒540 MANDAMUS & OTHER
☐550 CIVIL RIGHTS

FORFEITURE/PENALTY
☐610 AGRICULTURE
☐620 FOOD & DRUG
☐630 LIQUOR LAWS
☐640 R.R. & TRUCK
☐650 AIR LINE REGS.
☐660 OCCUPATIONAL SAFETY/HEALTH
☐690 OTHER

LABOR
☐710 FAIR LABOR STANDARDS
☐720 LABOR/MGMT. RELATIONS
☐730 LABOR/MGMT. REPORTING & DISCLOSURE ACT
☐740 RAILWAY LABOR ACT
☐790 OTHER LABOR LITIGATION

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☐830 PATENT
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☐420 BANKRUPTCY TRUSTEE
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☐460 DEPORTATION
☐810 SELECTIVE SERVICE
☐850 SECURITIES COMMODITIES EXCHANGE
☐860 SOCIAL SECURITY
☐862 BLACK LUNG
☐870 TAX SUITS
☐891 AGRICULTURAL ACTS
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☐893 ENVIRONMENTAL MATTERS
☐894 ENERGY ALLOCATION ACT
☐950 CONSTITUTIONALITY OF STATE STATUTES
☐970 NARA, TITLE III
☐890 OTHER STATUTORY ACTIONS

ORIGIN (PLACE AN ☒ IN ONE BOX ONLY)

☒1 ORIGINAL PROCEEDING ☐2 REMOVED FROM STATE COURT ☐3 REMANDED FROM APPELLATE COURT ☐4 REINSTATED OR REOPENED ☐5 TRANSFERRED FROM (SPECIFY DIST.) ☐6 MULTIDISTRICT LITIGATION

RESIDENCE OF PRINCIPAL PARTIES (IF DIVERSITY)

	PTF	DEF
RESIDENT OF YOUR STATE	☐1	☐1
NON-RESIDENT CORPORATION DOING BUSINESS IN STATE	☐2	☐2
NON-RESIDENT CORPORATION NOT DOING BUSINESS IN STATE	☐3	☐3
OTHER NON-RESIDENT OF YOUR STATE	☐4	☐4

JURY DEMAND: ☐ YES ☐ NO

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $

OTHER WRIT OF MANDAMUS

RELATED CASE(S) IF ANY

JUDGE Jack B. Weinstein DOCKET NUMBER 71 CR 479 / 75 C 624

CIVIL CASES ARE DEEMED RELATED IF PENDING CASE INVOLVES:

☐ 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT
☒ 2. SAME ISSUE OF FACT OR GROWS OUT OF THE SAME TRANSACTION
☐ 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK

DATE

SIGNATURE OF ATTORNEY OF RECORD

2

Form No. 82-Revised
..n approved by
..mp. Gen., U. S.
..ember 2, 1952

ORIGINAL

RECEIPT FOR PAYMENT

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK

RECEIVED FROM Barry Ivan Slotnick
233 Broadway
N.Y. N.Y. 10007

Place

Division

DATE 8/14/75

DOC. NO. 75 C 1334

CASE OR PROCEEDING Rubin-vs Carlson et al

ACCOUNT	AMOUNT		ACCOUNT	AMOUNT	
Clerk's Filing Fee Complaint	15	—	Registry Cash Bail		
Bankruptcy Filing Fee			Tender		
Referee's Sal. and Exp. Fund					
			Restitution		
Miscel. Earnings Admission of Attorney			Other Moneys Civil Judgment		
Copy-Compare					
			Costs		
Certificate			Fine		
			Naturalization Decl'n Pet'n No.		

Total → 15 —

Cash ☐ Check ☑ MONEY ORDER ☐

DEPUTY CLERK [illegible signature]

68663

☆ U.S. GPO : 1974-800

DEPARTMENT OF JUSTICE
FORM NO. USM-103
(REV-10-18-63)
FPI LC 4-73-4M BKS.-7018

RECEIPT
U. S. MARSHAL

A 910738

Eas District of N.Y.

Date 8/14/75, 19

Received of Slotnick

MARSHAL'S NO.	TITLE OF CASE	PROCESS NO.	PROCESS TYPE	AMOUNT
	75	✓	A	6.00
	75 C 1334			

Received by

U.S. MARSHALS SERVICE
PROCESS RECEIPT and RETURN

INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (*No. 5*) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.

PLAINTIFF: MEIR KAHANE

COURT NUMBER: 75 C 1334

DEFENDANT: NORMAN CARLSON, Director, Bureau of Prisons

TYPE OF WRIT(S): S + C

SERVE NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN: MATTHEW WALSH, Complex Director

AT ADDRESS (*Street or RFD, Apartment No., City, State and ZIP Code*): COMMUNITY TREATMENT CENTER, HOTEL BRYANT, NEW YORK CITY, N.Y.

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:

BARRY IVAN SLOTNICK
233 Broadway
NYC NY 10007

Number of writs to be served with this form-285	2
Number parties to be served in this case	1
Check for service on U.S.A.	V

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE:

Signature of Attorney or other Originator requesting service on behalf of: Barry Ivan Slotnick Esq. [X] PLAINTIFF [ ] DEFENDANT

TELEPHONE NUMBER: 233-5390

DATE: 8/14/75

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of writs indicated (Sign only first USM 285 if more than one 285 is submitted)	Total Writs	District of Origin	District to Serve	Signature of Authorized USMS Deputy or Clerk	Date

I hereby certify and return that I [ ] have personally served, [ ] have legal evidence of service, [ ] have executed as shown in "Remarks", the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

[ ] I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above. (See remarks below)

Name and title of individual served (if not shown above)

[ ] A person of suitable age and discretion then residing in the defendant's usual place of abode.

Address (complete only if different than shown above)

Date of Service | Time am pm

Signature of U.S. Marshal or Deputy	Forwarding Fee	Service Fee	Mileage (including endeavors)	Total

REMARKS:

Walsh 575462
Atty Gen 575463

3. NOTICE OF SERVICE

U.S. MARSHALS SERVICE
PROCESS RECEIPT and RETURN

INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (*No. 5*) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.

PLAINTIFF: MEIR KAHANE
COURT NUMBER: 75 C 1334

DEFENDANT: NORMAN CARLSON, Director Bureau of Prisons
TYPE OF WRIT(S): S+C

SERVE AT
NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN: NORMAN CARLSON Director
ADDRESS (*Street or RFD, Apartment No., City, State and ZIP Code*): Bureau of Prisons Washington, D.C.

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:
BARRY IVAN SLOTNICK
233 Broadway
NYC NY 10007

Number of writs to be served with this form-285	2
Number parties to be served in this case	1
Check for service on U.S.A.	✓

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE:

Signature of Attorney or other Originator requesting service on behalf of: Barry Ivan Slotnick
☒ PLAINTIFF
☐ DEFENDANT
TELEPHONE NUMBER: 233-5390
DATE: 8/14/75

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY – DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of writs indicated (Sign only first USM 285 if more than one 285 is submitted)	Total Writs	District of Origin	District to Serve	Signature of Authorized USMS Deputy or Clerk	Date

I hereby certify and return that I ☐ have personally served, ☐ have legal evidence of service, ☐ have executed as shown in "Remarks", the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above. (See remarks below)

Name and title of individual served (if not shown above)

☐ A person of suitable age and discretion then residing in the defendant's usual place of abode.

Address (complete only if different than shown above)

Date of Service	Time

Signature of U.S. Marshal or Deputy	Forwarding Fee	Service Fee	Mileage (including endeavors)	Total

REMARKS:

575465

3. NOTICE OF SERVICE

United States District Court

FOR THE

~~EASTERN DISTRICT OF NEW YORK~~

CIVIL ACTION FILE NO.

MEIR KAHANE,

Plaintiff

v.

NORMAN CARLSON, Director, Bureau of Prisons and MATTHEW WALSH, Complex Director, Federal Community Treatment Center ("CTC"),

Defendants

SUMMONS

To the above named Defendants:

You are hereby summoned and required to serve upon BARRY IVAN SLOTNICK

plaintiff's attorney, whose address is 233 Broadway
Forty-Fourth Floor
New York, New York 10007

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Lewis Orgel
Clerk of Court.

/s/ Marilyn Olsen
Deputy Clerk.

Date: August 14, 1975

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
--X

MEIR KAHANE,

Plaintiff,

-against-

NORMAN CARLSON, Director, Bureau of Prisons and MATTHEW WALSH, Complex Director, Federal Community Treatment Center ("CTC"),

Defendants.
--X

75C 1334

COMPLAINT

75 C.
J.B.W.

Plaintiff, complaining of the defendants, by his attorney, BARRY IVAN SLOTNICK, alleges as follows:

1. That the defendant NORMAN CARLSON, was and still is the Director of the Bureau of Prisons for the United States of America.

2. That the defendant, MATTHEW WALSH, was and still is the Complex Director of the Federal Community Treatment Center ("CTC") at New York City, New York.

3. That in these capacities the defendants are the custodians of the plaintiff, a prisoner at CTC.

4. That prior to his incarceration, the plaintiff resided at 1814 East Second Street, Brooklyn, New York.

5. That the action herein is one for mandamus to issue against the defendants, with jurisdiction lying within this Court under 28 USC §1361.

6. That venue in this District is founded upon 28 USC §1391(e)(4) as plaintiff resided in this District prior to incarceration. Kahane v. U.S., -F.Supp.-, 75-C-624 (71 CR-479),

(5/7/75, E.D.N.Y.).

7. On March 17, 1975, this Court issued an "Amended Commitment, Violation of Probation" which sentenced plaintiff to one (1) year of incarceration.

8. The defendants have refused to provide plaintiff, an Orthodox Jewish Rabbi, with Kosher food, as his religion mandates. The foregoing is in violation of plaintiff's First Amendment rights.

9. Defendants have further refused to allow plaintiff access to a quorom of ten (10) Orthodox Jewish co-religionists (minyan) as is required by his religion for prayer and worship. The foregoing is in violation of plaintiff's First Amendment rights.

10. That the defendants have in these matters acted in violation of the rights and protections accorded the plaintiff under the First and Eighth Amendments to the Constitution of the United States of America.

WHEREFORE, plaintiff demands that a writ of mandamus issue from this Court requiring the defendants, and each of them, to provide plaintiff with Kosher food during the period of his incarceration, and additionally, that plaintiff be accorded access to a minyan, together with the costs and disbursements of this action.

Dated: New York, New York
August 14, 1975

BARRY IVAN SLOTNICK
Attorney for Plaintiff
233 Broadway
Forty-Fourth Floor
New York, New York 10007
(212) WO 4-3200

PLAINTIFFS

UNITED STATES OF AMERICA, ex. rel.

MEIR KAHANE

DEFENDANTS

MATTHEW WALSH, Complex Director,

Community Treatment Center

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

BARRY IVAN SLOTNICK

233 Broadway
Forty-fourth Floor
New York City, New York 10007
[212] 233-5390

ATTORNEYS (IF KNOWN)

NOTE: LIST RESIDENCE ADDRESS AND COUNTY FOR EACH PLAINTIFF AND DEFENDANT ON REVERSE SIDE.

BASIS OF JURISDICTION

(PLACE AN ☒ IN ONE BOX ONLY)

☐1 U.S. PLAINTIFF ☒2 U.S. DEFENDANT ☐3 FEDERAL QUESTION (U.S. NOT A PARTY) ☐4 DIVERSITY

IF DIVERSITY, INDICATE RESIDENCE BELOW.

CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

HABEAS CORPUS, 28 USC §2241

Has this or a similar cause been previously filed in SDNY at any time? No (x) Yes ( ) ______ Judge Previously Assigned

NATURE OF SUIT

(PLACE AN ☒ IN ONE BOX ONLY)

CONTRACT
- ☐110 INSURANCE
- ☐120 MARINE
- ☐130 MILLER ACT
- ☐140 NEGOTIABLE INSTRUMENT
- ☐150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGEMENT
- ☐190 OTHER CONTRACT*
- ☐195 CONTRACT PRODUCT LIABILITY
- *STATE TYPE ______

REAL PROPERTY
- ☐210 CONDEMNATION
- ☐220 FORECLOSURE
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- ☐330 FEDERAL EMPLOYERS' LIABILITY
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- ☐442 JOBS
- ☐443 ACCOMMODATIONS
- ☐444 WELFARE
- ☐440 OTHER CIVIL RIGHTS

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- ☐520 PAROLE BRD. REVIEW
- ☒530 HABEAS CORPUS
- ☐540 MANDAMUS & OTHER
- ☐550 CIVIL RIGHTS
- *NAME OF SENTENCING JUDGE AND CASE #

FORFEITURE/PENALTY
- ☐610 AGRICULTURE
- ☐620 FOOD & DRUG
- ☐630 LIQUOR LAWS
- ☐640 R.R. & TRUCK
- ☐650 AIR LINE REGS.
- ☐660 OCCUPATIONAL SAFETY/HEALTH
- ☐690 OTHER

LABOR
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- ☐720 LABOR/MGMT. RELATIONS
- ☐730 LABOR/MGMT. REPORTING & DISCLOSURE ACT
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- ☐850 SECURITIES COMMODITIES EXCHANGE
- ☐855 STOCKHOLDER SUITS
- ☐860 SOCIAL SECURITY
- ☐862 BLACK LUNG
- ☐870 TAX SUITS
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- ☐894 ENERGY ALLOCATION ACT
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- ☐970 NARA, TITLE III
- ☐890 OTHER STATUTORY ACTIONS

ORIGIN

(PLACE AN ☒ IN ONE BOX ONLY)

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RESIDENCE OF PRINCIPAL PARTIES (IF DIVERSITY)

	PTF	DEF
RESIDENT OF YOUR STATE	☐1	☐1
NON-RESIDENT CORPORATION DOING BUSINESS IN STATE	☐2	☐2
NON-RESIDENT CORPORATION NOT DOING BUSINESS IN STATE	☐3	☐3
OTHER NON-RESIDENT OF THIS STATE	☐4	☐4

JURY DEMAND: ☐ YES ☒ NO

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $

* OTHER

RELATED CASE(S) IF ANY

JUDGE [illegible] DOCKET NUMBER [illegible]

CIVIL CASES ARE DEEMED RELATED IF PENDING CASE INVOLVES:

☐ 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT

☐ 2. SAME ISSUE OF FACT OR GROWS OUT OF THE SAME TRANSACTION

☐ 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK

DATE

August 12, 1975

SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

☒ YES ☐ NO

UNITED STATES DISTRICT COURT (New York, Southern)

AO Form No. 82-Revised
Form approved by
Comp. Gen., U. S.
December 2, 1952

ORIGINAL

RECEIPT FOR PAYMENT

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK

RECEIVED FROM Barry Ivan Slotnick
23 B Bway
NYC 10007

DOC. NO. 75-C-1343 | Place B Elyn | Division | DATE 8/14/75

CASE OR PROCEEDING U S A Israel Meir Kahane vs Matthew Walsh

ACCOUNT	AMOUNT		ACCOUNT	AMOUNT	
Clerk's Filing Fee Habeas Corpus	5	00	Registry Cash Bail		
Bankruptcy Filing Fee			Tender		
Referee's Sal. and Exp. Fund			Restitution		
Miscel. Earnings Admission of Attorney			Other Moneys Civil Judgment		
Copy-Compare			Costs		
Certificate			Fine		
			Naturalization Decl'n Pet'n No.		
			Total →	5.00	

Cash ☒ Check ☐ MONEY ORDER ☐

DEPUTY CLERK Stephen Shinken

68686

☆ U.S. GPO : 1974-

75C 1343

UNITED STATES DISTRICT COURT
~~SOUTHERN~~ DISTRICT OF NEW YORK
EASTERN

THE UNITED STATES OF AMERICA, ex. rel.
MEIR KAHANE,

Rela[illegible],

- against -

United States Marshall for the Eastern District of New York and,
MATTHEW WALSH, COMPLEX DIRECTOR, COMMUNITY TREATMENT CENTER ("CTC"),

Respondent.

ORDER TO SHOW CAUSE FOR A WRIT OF HABEAS CORPUS

Upon the annexed copy of a verified petition for a Writ of Habeas Corpus, the original of which has been filed with this Court, it is hereby

ORDERED, that the respondent or his attorney show cause before a judge of this Court at the United States Courthouse, 225 Cadman Plaza, Brooklyn (~~Foley Square, New York~~) New York, in Room 10 at 4 P.M. on August 14, 1975 or as soon thereafter as counsel may be heard, why an order should not be entered directing that a Writ of Habeas Corpus issue against the respondent and for such other and further relief as to the Court may seem just and proper, and it is further

ORDERED, that pending determination of the matter contained herein that the Relator be kept at his present place of incarceration, and that he not be moved, and that in all other respects the status quo be maintained until adjudication of the Writ, and it is further

ORDERED, that a copy of this order, together with the papers upon which it is granted be served herewith upon respondent or his attorney ~~on or before~~ ________________, ~~1975 by~~ ________ P.M., and that such service shall be deemed good and sufficient.

Dated: New York City, New York
August 14, 1975

/s/ Jack B. Weinstein
U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA, EX REL.
MEIR KAHANE,

Relator,

PETITION FOR WRIT OF HABEAS CORPUS

- against -

United States Marshall for the Eastern District of New York, and
MATTHEW WALSH, COMPLEX DIRECTOR,
COMMUNITY TREATMENT CENTER ("CTC")

Respondent.

TO THE HONORABLE UNITED STATES DISTRICT COURT FOR THE ~~SOUTHERN~~ EASTERN DISTRICT OF NEW YORK:

The petition of BARRY IVAN SLOTNICK, respectfully shows:

1. That your petitioner is an Attorney at Law of the State of New York, and is the attorney for MEIR KAHANE, Relator herein, and is fully familiar with all the facts and circumstances in connection herewith. That your petitioner makes application herein a Writ of Habeas Corpus for his client, MEIR KAHANE, by reason of the fact that said MEIR KAHANE is unlawfully detained and restrained of his liberty by the respondent, COMPLEX DIRECTOR OF THE COMMUNITY TREATMENT CENTER,New York City, New York, the said Center being a Penal Institution under the jurisdiction of the Bureau of Prisons.

2. The Relator is now in the custody of the ~~Complex Director of said Community Treatment Center, New York City,~~ United States Marshall for the Eastern District of New York, which prison is in the territorial jurisdiction of this Court.

3. The cause or pretext of said detention and restraint is a certain plea of guilty taken in the District Court, Eastern District of New York, before Weinstein, J., on July 9, 1971 to a charge of conspiracy to make, receive and possess incendary devices.

4. On July 23, 1971, the Relator was sentenced to five (5) years of imprisonment, said sentence suspended, and fined $5,000.00. Relator was placed on five (5) years probation.

5. On May 15, 1972 an Order was filed adjudicating the Relator in violation of probation, said Order having been delivered after a hearing held on May 2, 1972. The Order added special conditions of probation and continued said probation.

6. On February 21, 1975 the Relator was found to have violated probation. Probation was revoked and a one (1) year term of imprisonment was imposed.

7. On May 7, 1975 an Order was filed requiring the Bureau of Prisons to insure that no religious rights of the Relator, an orthodox Jewish Rabbi, be trod upon. Said Order was amplified by a second Order, dated April 4, 1975 which, after refusal by the Bureau of Prisons, transmitted by the United States Attorney, to hold the religious freedom of the Relator inviolate, caused the Court to require that, until such time as the authorities could make such guarantees, the Relator be held at his present place of incarceration, and he there be allowed such freedom as is necessary to eat kosher meals and participate in orthodox Jewish religious services.

8. In both word and deed it has become obvious that the government and the respondent will continue in the paths they have chosen early in this matter, to wit, to deny to the Relator the most elementary requirements of his faith, viz. kosher food and the availability of his co-religioners for the purposes of prayer.

9. The said detention is, therefore, unlawful and unconstitutional, in that the Relator is entitled to the sanctity and the practice of his religion. The Constitution, the material interpertating that most noble charter, and the entire history of government and its relationship to religious liberty indicate that the Relator is being incarcerated under conditions antithetical to his rights and liberties.

10. The issues presented on this application are, whether, under the guarantees afforded to the Relator by the Constitution of the United States, Relator was and is being deprived of his liberty without due process of law, in a manner in violation of the guarantees of equal protection, to all men, under the law, and in a form repugnant to the Bill of Rights.

11. That all of the facts heretofore asserted may be before the Court on this application and the record on appeal to the United States Court of Appeals, Second Circuit (75-2008 - 75-1275) (joint appendix) containing verification of all of the aforesaid statements is hereby made a part of this petition with the same force and effect as if fully incorporated herein. A copy of said record will be submitted to the Court.

12. In order that further facts in behalf of the Relator in this application may be presented to this Court, it is respectfully urged that the Court set a date for hearing,and that the Relator's presence be required at said hearing in order that he may testify to the factual matters necessary for proper adjudication.

13. Due to the nature of the irreparable harm and bodily damage which will be caused by the necessary abstinence of the Relator from normal and nutritious foods during his current period of incarceration and pending determination of this writ, it would be most respectfully requested of this Court that this Court release the defendant pending determination of the matter herein either in the custody of counsel or upon equitable bail. This Court may act in the interests of justice in this matter.

14. No other application for this relief has heretofore been made to any Court or judge other than an application under 28 U.S.C. 2255, on May 7, 1975.*

WHEREFORE, petitioner prays that a Writ of Habeas Corpus issue herein directed to the said United States Marshall Eastern District and MATTHEW WALSH, as Complex Director of the Community Treatment Center, New York City, New York, commanding him to produce the body of the Relator MEIR KAHANE, before this Court at a time and place to be specified in said writ, to the end that this Court may inquire into the cause of the Relator's detention, and that the Relator be ordered discharged from the detention and restraint aforesaid.

BARRY IVAN SLOTNICK
Attorney for Relator
233 Broadway
44th Floor
New York City, N.Y. 10007
233-5390

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Personally appeared before me, BARRY IVAN SLOTNICK, who, after being duly sworn, says and deposes that the facts and things alleged in the foregoing petition are true, to the best of his knowledge, upon information and belief.

Sworn to and subscribed
before me this day of
August, 1975.

BARRY IVAN SLOTNICK

NOTARY PUBLIC
STATE OF NEW YORK

WEINSTEIN, J

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

75C 624

MEIR KAHANE,

Petitioner,

- against -

UNITED STATES OF AMERICA,

Respondent.

APPLICATION PURSUANT TO 28 U.S.C.A. 2255

S I R S :

PLEASE TAKE NOTICE, that upon the annexed petition of MEIR KAHANE, by his attorney BARRY IVAN SLOTNICK, and upon all of the proceedings had herein, the undersigned will move this Court to vacate, set aside or correct the sentence imposed upon the above named petitioner, MEIR KAHANE, pursuant to Title 28 U.S.C.A. Section 2255 and for such other and further relief as this Court may find just and proper.

Dated: New York, New York
April 25, 1975

Yours, etc.

BARRY IVAN SLOTNICK
Attorney for Petitioner
233 Broadway
New York, New York
(212)-233-5390

TO: DAVID TRAGER, ESQ.
U.S. Attorney
Eastern District of N.Y.
United States Courthouse
Brooklyn, New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MEIR KAHANE,

Petitioner,

- against -

UNITED STATES OF AMERICA,

Respondent.

PETITION

BARRY IVAN SLOTNICK, on and behalf of the petitioner MEIR KAHANE respectfully shows to the Court:

1. That the defendant MEIR KAHANE is presently serving a sentence of one (1) year imprisonment imposed by this Court on February 21, 1975.

2. That on March 17, 1975 this Court granted an application and issued an order allowing the defendant his religious rights pursuant to his request for kosher food, etc. (see Commitment Order and Application of March 17, 1975).

3. Pursuant to the order of the Court, petitioner's attorney contacted officials of the United States Bureau of Prisons and was informed that the Bureau of Prisons would not provide the means by which the order of the Court could be carried out. To date the Bureau of Prisons has refused to provide the defendant with kosher food (the record is replete with their refusals - and the Court is respectfully referred to a hearing held herein on April 24, 1975).

4. Petitioner's counsel requested that the defendant's incarceration be maintained at a community treatment center in order that he may be allowed to provide himself with kosher meals and attend religious services - due to the refusal of the Bureau of Prisons to so honor the Court's commitment.

5. That on April 4, 1975 this Court continued the defendant's incarceration at a community treatment center and continued the order allowing him out to eat meals and attend religious services.

6. Thereafter, on April 18, 1975, a proceeding was commenced in which issues of jurisdiction relating to the proposed hearing were taken up.

7. That on April 24, 1975 a hearing was held before this Court in which witnesses testified with regard to the necessity of the government to provide the defendant with kosher foods during any period of incarceration.

8. That during the same hearing the testimony indicated that it was a simple process to provide an inmate with kosher food and that the aforementioned procedure had occurred in the past but was not taking place with regard to the inmate MEIR KAHANE.

9. The inmate indicated to this Court that he is presently an aggrieved individual and that he is not receiving kosher foods according to the spirit and dictates of this Court's sentence, commitment and order.

10. At present the inmate is incarcerated at the community treatment center maintained by the United States Bureau of Prisons located at 38 West 31st Street and is not being provided kosher meals by the government.

11. The inmate contends that the effect of the sentence as levied upon him on February 21, 1975 and as so governed by the various applications and commitments pursuant to 71 Cr. 479 (United States of America v. Kahane) is to cause a deprivation of his 1st and 8th Amendment rights under the Federal Constitution.

12. It is the further contention of the petitioner that he cannot be incarcerated without the right to receive kosher food as said incarceration is not only a violation of his 1st Amendment right but also constitutes cruel and unusual punishment under the Constitution of the United States.

13. The defendant further wishes to repeat and reaffirm and incorporate by reference all of the prior papers and proceedings had herein commencing with the original hearing regarding his probation violation (February 21, 1975). Furthermore, the various applications and memoranda submitted herein under indictment 71 Cr. 479 (United States of America v. Meir Kahane) are also repeated and reaffirmed for the purpose of this proceeding herein.

14. Furthermore, defendant requests that his Notice of Motion, motion and affidavit submitted to this Court and dated April 11, 1975 be made part of this application together with the supplemental memorandum of law submitted thereafter together with the memorandum of law submitted on April 23, 1975 to this Court.

15. Furthermore, the defendant requests that the hearing held on April 24, 1975 be considered as part of this record in order for the Court to be able to fully decide the issue herein.

16. That the petitioner repeats and reaffirms all of the exhibits, papers and proceedings heretofore had herein and bearing indictment number 71 Cr. 479 as if fully set forth herein.

17. That the sentence hereunder is therefore illegal and void and imposed in violation of the Constitution of the United States in that the petitioner is not receiving kosher food all in violation of his 1st and 8th Amendment rights pursuant to the Constitution of the United States.

18. It is the contention of the petitioner that the sentence imposed was in violation of the Constitution or laws of the United States and that the Court was without jurisdiction to impose such sentence and that the aforementioned sentence (under which he is presently incarcerated) is subject to collateral attack due to its resultant effect of unconstitutionality and therefore makes this application to the Court to vacate, set aside or correct the sentence.

19. The Court can readily find that there has been a denial and infringement of the constitutional rights of the prisoner so as to render the judgment vulnerable to collateral attack.

20. Therefore, pursuant to Title 28, United States Code, Section 2255 the Court must vacate and set the judgment aside and discharge the prisoner or resentence him or correct the sentence as may appear appropriate to the Court.

21. This application is made due to the present illegality of the defendant's detention. The sentence of this Court and its resulting effect presently violates his 1st and 8th Amendment rights of the United States Constitution in that he is not receiving kosher food pursuant to the dictates of his religion. The sentence levied upon the defendant therefore is obviously unduly severe and the terms of sentence as is being carried out has caused the defendant to be constitutionally deprived.

22. The defendant was originally tried for a violation of probation by this Court for acts which occurred in Israel to which he was either found guilty or pled guilty. The judgment of the Israeli Courts was that he was receiving a suspended sentence.

23. The defendant has spent time in Israel incarcerated as a result of the initiation of the aforementioned cases as referred to in the original revocation of probation hearing held on the 21st day of February 1975 before this Court.

24. This Court has received communications from the defendant, his family and literally hundreds of members of the community requesting that the Court reconsider, modify or terminate the sentence of the defendant.

25. It is respectfully requested that this Court resolve the issues and controversy concerning the religious rights and freedom of an inmate in order to properly preserve their 1st Amendment right and also to avoid excesses that have occurred in prisons regarding same.*

WHEREFORE, petitioner prays that this Court entertain his application pursuant to 28 U.S.C. 2255 and issue an order remedying the grievance of the inmate pursuant to 28 U.S.C. 2255 and that petitioner receive such other and further relief as may be deemed just and proper.

Dated: New York, New York
April 24, 1975

BARRY IVAN SLOTNICK

*Counsel did not present to this Court testimony at the hearing held herein in view of the limitation to kosher food but Orthodox Jews have been forcibly shaven during holidays in which they are not allowed to, forced to break the Sabbath and transported on the Sabbath. Note that during the present period of time the inmate MEIR KAHANE cannot shave for religious reasons and if he were incarcerated at other than a community treatment center he would either be forced to shave or be forcibly shaven - all in violation of his Constitutional rights. Under the theory of the government he could not present a claim until the violation had occurred - to wit, being forcibly shaven. There are also coming holidays including Rosh Hashana and Yom Kippur - which mandates a day of fast together with other holidays occurring during the summer which mandate fasting. The prisoner has already been caused to spend the high holidays of Passover away from his immediate family - but with others therefore allowing his observance all by Court order and consent of the government.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

BARRY IVAN SLOTNICK, for and on behalf of the petitioner inmate, MEIR KAHANE, first being duly sworn states that the allegations of the foregoing application for habeas corpus are true to the best of his knowledge and belief.

BARRY IVAN SLOTNICK

Subscribed and sworn to
before me this 24th day of
April, 1975.

NOTARY PUBLIC - STATE OF NEW YORK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MEIR KAHANE,

Petitioner,

- against -

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OF LAW

THE DEFENDANT'S SENTENCE SHOULD BE DEALT WITH ACCORDING TO LAW.

The defendant has appeared before the Court as an aggrieved prisoner and has made application for a reinstatement of his Constitutional rights and proper and equitable redress by this Court.

The defendant has alleged jurisdiction in this Court pursuant to Rule 35 of the Rules of Procedures in Federal Courts; mandamus; injunction; the 1st and 8th Amendments of the United States Constitution; through various doctrines of equity; the equal protection clause of the United States Constitution; and furthermore urges the Court review the proceedings pursuant to 28 U.S.C. 2255 (see defendant's memorandum of law submitted April 23, 1975).

Properly, Section 2255 proceedings apply to prisoners under Federal Court sentence and is technically a motion to vacate sentence before the original sentencing court. Hayman v. U.S., 342 U.S. 205, 72 Supreme Court 263, 96 Lawyer's Ed. 232 (1952):

> "This review of the history of Section 2255 shows that it was passed at the instance of the Judicial Conference to meet practical difficulties that had arisen in administering the habeas corpus jurisdiction of the federal court. Nowhere in the history of Section 2255 do we find any purpose to impinge upon prisoners' rights of collateral attack upon their convictions... The sole purpose was to minimize the difficulties encountered in habeas corpus hearings by affording the same rights in another and more convenient forum." (Id. at page 219).

The commentary on criminal defense techniques by Cipes at Section 44.03 (2) states the following:

> "The reasons for this change are that the files and records of the conviction are more readily available in the sentencing court and the workload for these cases is now more evenly spread within the federal court system. Anything which may be accomplished under traditional habeas corpus may also be accomplished under Secti on 2255..."
>
> "The Section 2255 motion must be filed in the sentencing court and is 'exactly commensurate' with habeas corpus in its scope and perhaps, slightly more flexible in framing a proper remedy." (Footnoting Hill v. U.S., 368 U.S. 424, 427, 82 Sup. Ct. 468, 7 Lawyer's Ed. 2d 417 (1962); Kaufman v. U.S., 394 U.S. 217, 89 Sup. Ct. 1068, 2 Lawyer's Ed. 2d 227 (1969); and Andrews v. U.S., 373 U.S. 334, 83 Sup. Ct. 1236, 10 Lawyer's Ed. 2 383 (1963) - at page 44-23 Section 44.03 (2)(i)).

Therefore it appears that an application pursuant to Section 2255 is proper and preferable over a habeas corpus action elsewhere. Especially, under all of the factors of this case it would be a improper and improvident exercise of discretion not to presently issue a ruling in view of the petitioner's grievance.

As in this proceeding the claim of constitutional violation is cognizable in petitioner's application.

The discretion of treating applications such as the one presented herein pursuant to the ends of justice and as referred to in prior memoranda submitted to the Court is further amplified in the percurian decision of United States v. Carbo, 474 Fed. 2d 699 (9th Cir. 1973).

In view of the hearing held before this most honorable Court and the procession of witnesses it is clear that the aggrieved inmate is entitled to substantial relief by this Court.

Respectfully submitted,

BARRY IVAN SLOTNICK
Attorney for Petitioner
233 Broadway
New York, New York
(212) 233-5390

DRAFT
COPY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- against -

MEIR KAHANE,

Defendant.

71-Cr-479

NOTICE OF MOTION FOR ORDER PROVIDING KOSHER FOOD FOR DEFENDANT

S I R S :

PLEASE TAKE NOTICE that upon the annexed motion and exhibits, the undersigned will move this Court before the Honorable Jack B. Weinstein for an Order directing the United States to make available to the defendant, during his incarceration, kosher food on a regular daily basis and the availability of a duly constituted minyan, all for reasons more fully set forth in the annexed motion and in the memorandum in support of said motion.

Dated: New York, New York
April 11, 1975

Yours, etc.

BARRY IVAN SLOTNICK
Attorney for Defendant
233 Broadway
New York, New York
(212) 233-5390

TO: DAVID TRAGER, ESQ.
United States Attorney
Eastern District of New York
United States Courthouse
Brooklyn, New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	71-Cr-479
- against -	MOTION FOR ORDER PROVIDING KOSHER FOOD FOR THE DEFENDANT
MEIR KAHANE, Defendant.	

Defendant, Rabbi Meir Kahane, respectfully moves this Court for an Order directing the United States and its officers to make available to him, on a regular daily basis, kosher food that meets Orthodox Jewish requirements comparable in nutritious content to the regular menu served to all other inmates in federal institutions.

Furthermore, the defendant moves for an Order directing that during the period of his incarceration, should at any time a "minyan", as defined by Orthodox Jewish law, not be available, that defendant be permitted to go to religious services in a nearby town where such a "minyan" be available.

The grounds for this motion, more fully set out in the attached Memorandum of Law, are that the defendant is entitled, by reason of the First and Eighth Amendments to the United States Constitution, to serve his prison sentence in a manner that is not cruel and unusual and that accords with the dictates of his conscience and his religion. Since there are available means by which the defendant may be lawfully kept in federal custody and still have adequate and nutritious kosher food available to him and the additional requirement of a duly constituted "minyan" available to him, this Court should direct that means to those ends be employed.

Dated: New York, New York
April 11, 1975

Yours, etc.

BARRY IVAN SLOTNICK
Attorney for Defendant
233 Broadway
44th Floor
New York, New York 10007
(212) 233-5390

I, BEN B. WEINTRAUB, being duly sworn, depose, and say:

1. I am Administrative Assistant to the National Executive Director of the National Association for Justice with offices in Washington, D. C. National Association for Justice is a non-profit organization that assists inmates with administrative and institutional matters relating to incarceration.

2. Rabbi Meir Kahane is a member of this Association and requested our assistance with regard to kosher food while incarcerated, in conformity with the strict dietary laws of the Jewish faith.

3. In March 1975, I spoke by telephone with Larry F. Taylor, Superintendent, Federal Prison Camp (Allenwood) in regard to kosher food for Rabbi Kahane. Mr. Taylor stated that kosher food, as a matter of privilege, would not be extended to the Rabbi or any other offender at Allenwood in the absence of a Court Order compelling same.

4. It is the position of the National Association for Justice that kosher food for orthodox Jews is not a "matter of privilege" but rather a fundamental First Amendment right.

5. In the past, the Bureau of Prisons has provided kosher food for orthodox Jewish offenders who were members of this Association.

6. The procedure, which National Association for Justice was instrumental in perfecting, follows:

a. The Food Service Supervisor at the institution prepares a

government purch[illegible] order and [illegible]

DireCtor of the National Association for Justice with offices in Washington, D. C. National Association for Justice is a non-profit organization that assists inmates with administrative and institutional matters relating to incarceration.

2. Rabbi Meir Kahane is a member of this Association and requested our assistance with regard to kosher food while incarcerated, in conformity with the strict dietary laws of the Jewish faith.

3. In March 1975, I spoke by telephone with Larry F. Taylor, Superintendent, Federal Prison Camp (Allenwood) in regard to kosher food for Rabbi Kahane. Mr. Taylor stated that kosher food, as a matter of privilege, would not be extended to the Rabbi or any other offender at Allenwood in the absence of a Court Order compelling same.

4. It is the position of the National Association for Justice that kosher food for orthodox Jews is not a "matter of privilege" but rather a fundamental First Amendment right.

5. In the past, the Bureau of Prisons has provided kosher food for orthodox Jewish offenders who were members of this Association.

6. The procedure, which National Association for Justice was instrumental in perfecting, follows:

a. The Food Service Supervisor at the institution prepares a government purchase order and enters an agreement with a food outlet for frozen kosher T.V. dinners.

b. The order is delivered to the institution and stored.

c. Purchase orders are submitted bi-monthly.

7. Based upon my experinece in the field of Corrections, it is my professional judgement that such a procedure as described above would not represent an overbearing burden to the Bureau of Prisons. Its implementation would serve to protect First Amendment rights and in my opinion, be an asset to summary rehabilitation.

B. Weintraub

BEN B. WEINTRAUB

Sworn before me

this 8th day of April, 1975

NOTARY PUBLIC

Washington D.C. 20036

My Commission Expires April 30, 1979

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- against. -

71-CR-479

MEIR KAHANE,

Defendant.

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ORDER PROVIDING FOR KOSHER FOOD FOR DEFENDANT

INTRODUCTION

Pursuant to this Court's order of March 17, 1975, defendant, Rabbi Meir Kahane, was sentenced to one year in prison for probation violation, as adjudicated by this Court on February 21, 1975.

At the time of the order of commitment, this Court both ordered and assured that the defendant would receive kosher food in keeping with his strict dietary requirements and that defendant would be allowed to go to religious services in a town nearby his place of incarceration were it not possible to compose within the prison walls the required assemblage of Orthodox Jewish congregants ("Minyan").

Defendant has filed a motion today requesting that an order be forthcoming from this Court requiring that the order of March 17th be enforced.

We request that specific relief be granted along these lines to insure that the defendant is not subjected to excessive and cruel deprivations while he serves his prison term.

I

DEFENDANT'S DIETARY RESTRICTIONS

Defendant, Rabbi Meir Kahane, is a practicing member of the Orthodox Jewish faith. More exactly, defendant is an Ordained Orthodox Rabbi - a religious leader, confidant, and teacher. Among the tenants of the Orthodox Jewish faith are severe restrictions as to the types of foods its adherence may ingest. In accordance with laws centuries old they may only eat foods all of whose ingredients are deemed "kosher", or "clean", and which were prepared under strict rabbinical supervision. While meat and meat products are the most obvious foods which must be so supervised (from ritual slaughter through final preparation) there are numerous other substances (e.g. fish, fowl, certain cheeses, and even candies) which must also pass religious muster, to be deemed "kosher", and therefore, edible. Additionally, Rabbi Meir Kahane would not be permitted, in accordance with strict Orthodox dietary requirements, to eat even kosher foods, where such foods cooked in utensils which had previously been used in preparation of non-kosher food (or "tref", products).

Without the speedy intervention of this Court, Rabbi Meir Kahane will be relegated to a severely restricted diet consisting of only those foods which do not have any non-kosher components. Such a diet could, quite obviously, not even approach the barest essentials of rudimentary nutrition.

Jewish law is an ancient, specific, and still viable body of requirements by which members of the faith live their day to day lives. Due to its age and constant interpretation and re-interpretation (in much the same way as our own secular law) Jewish law has addressed itself to the vast majority, if not all the situations which a man might face upon this earth. As to the question of whether a Jewish prisoner may eat non-kosher food while in prison, the body of Jewish law has answered with a resounding "no". Non-kosher goods may be consumed _only_ as a last resort, to prevent death. A prisoner is _forbidden_, by the tenents of Judiasm, to partake of non-kosher food unless the preservation of his life, threatened by starvation or illness, demands eating a specific quantity of non-kosher foods.

The great Maimonides has said that:

> "One who is critically ill, and medical opinion is that he will die unless he eats one of the foods forbidden to us by our Torah, should be nourished as recommended and healed with any of the forbidden things except idolatry, adultery or murder." (Maimonides, _Fundalemtals of Torah Law_, 5:6).

As if to underline the feeling and direction of the law, the masterful code of Jewish law - the Shulchn Aruch Yoreh Deah - reiterates that the prohibitions of the Torah, of which the eating of only kosher foods is one, may be transgressed only if one is threatened with death. Shulchn Aruch Yoreh Deah 147:1.

In any given time of the existence of the Jewish people throughout history, the great commentators of law and religion have been asked to reassess and/or reinterpret the laws. In all cases, the laws of the Torah are held as inviolable, save, as was said before, in the face of death. In an instructional manual for Jewish soldiers who were conscripted into the Russian and Polish armies a legal scholar was to write:

> "(I)f God forbid, you cannot receive any help in obtaining kosher food you must write your family and exhort them to sell your clothes and property left at home...in order to avoid the terrible sin of eating non-kosher food...for this is what we affirm twice daily in our Confession of Faith, '...and ye shall love the Lord thy God with all thy heart, with all thy soul, and with all they possessions' (Deuteronomy 6:5). If you cannot get help even from your own household, then eat dry bread crusts with your canteen of water and rejoice in this great testing to which G-d is subjecting you. ...If you be a true hero all your days as a soldier, and stumble not into transgressions, and be victorious in this great testing of your faith and commitment, and question not the actions of the Holy One, Blessed Be His Name, May our lot be your lot and your portion (i.e. Heavenly rewards) be our portion." (Machne Yisrol, 8:58, authored by Israel Meir Hacohen (the "Chofetz Chayim")).

Clearly, under the laws by which Rabbi Meir Kahane is required to live his life, he cannot partake of non-kosher food while in prison.

II

THE LAW ON THIS MATTER

When faced with a situation which threatens to denigrate an individual's First Amendment protection as to freedom in the pursuance of his religious beliefs,

> "...the Constitution requires the broadest tolerance of religiously based activity and requires public officials to take care to avoid inhibiting any thoughts or deeds reasonably characterized as religious." (Wilson v. Beame, et al., U.S. District Court for the Eastern District of New York, Weinstein D.J., 6/7/74, 74-C-208.)

In the landmark case of Sherbert v. Werner, 374 U.S. 398, 83 Supreme Court 1790, 10 Lawyer's Edition 2nd 965 (1963) the Court faced the sad dillema of a Seventh Day Adventist, who, because she could not accept employment which required work on Saturdays, as it was her sabbath, was denied benefits under South Carolina's Unemployment Compensation Act. Describing the "door" of the Free Exercise Clause of the Constitution as "tightly closed" against government regulation of religious beliefs, the Court laid the foundation for future assaults against the First Amendment:

> "If a government regulation is to be allowed to float freely in the pool of constitutional protection it must either represent 'no infringement by the State of...Constitutional rights of free exercise, or... be justified by a single 'compelling state interest in the regulation of a subject within the State's Constitutional power to regulate....'" (374 U.S. at 403, citing NAACP v. Button, 371 U.S. 415, 438, 83 Supreme Court 328, 9 Lawyer's Edition 2d 405, 421).

The appellant's benefits were quickly granted.

Mr. Justice Douglas, concurring, examined the case and realized it to be a case "...of small dimensions, though profoundly important." (374 U.S. at 410). (His comments, in the light of kindsight, have proved providential. See generally, Shapiro v. Thompson, 394 U.S. 618, 89 Supreme Court 1322 (1969), where Sherbert is cited along with such seminal decisions as Skinner v. Oklahoma and Korematsu v. U.S.). Douglas went on to say:

> "...many people hold beliefs alien to the majority of our society - beliefs that are protected by the First Amendment, but which could easily be trod upon under the guise of 'police' or 'health' regulations reflecting the majority's views." (374 U.S. at 411).

In Barnett v. Rodgers, 410 Fed. 2d 995 (D.C. Cir. 1969), the District of Columbia Circuit was faced with a somewhat analgous request to that of the defendant herein. There, Muslim prisoners sued jail officials of the District of Columbia jail on the grounds that their First Amendment rights had been abridged by the prison's refusal to serve plaintiffs at least one full course pork free meal daily. Their claim was based upon a Muslim dietary tenet which prohibits the eating of pork products or food prepared from pork derivatives. (Note here that the Orthodox Jewish faith's dietary restrictions are far more extensive).

The District Court granted the defendants' motion to dismiss on the asserted ground that:

> "(t)he inmate population of the District of Columbia Jail is fed a well balanced and wholesome diet," and that appellants may "by refraining from eating those things that they consider objectionable practice their religion."

The Court further found that:

> "(t)he diet provided at the ...Jail is prepared with no special consideration given to any prisoner or religious denomination." (410 Fed. 2d at 999).

In declaring that such were not the proper issues to be considered in the plaintiff's Constitutional claim, the Court of Appeals reversed and remanded the case for further proceedings.

At issue in such circumstances according to the District of Columbia Circuit is a "governmental activity (which) impairs individual ability to abide (by) religious beliefs." (410 Fed. 2d at 1000). In testing the constitutionality of such activity, "two demonstrations become essential to its validity". Relying on the Supreme Court's decision in Sherbert, the Court set down the following two-fold test: (footnotes omitted):

> "The first is a clear showing that 'any incidental burden on the free exercise of appellant's religion (is) justified by a compelling state interest in the regulation of a subject within the State's constitutional power to regulate'..."

On this score, "only the gravest abuses endangering paramount interests give occasion for permissible limitations" on free exercise. The second is an equally convincing showing that "no alternative forms of regulation could combat such abuses without infringing First Amendment rights." For "even though the governmental purposes be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. However attractive the end to be achieved, the means employed must hoard First Amendment values." While the Barnett court remanded the case for further finding regarding the practical problems that may be involved in complying with plaintiff's request and whether the governmental purposes and operations could be pursued and satisfied "by a means that (less) broadly stifle fundamental personal liberties," Shulton v. Tucker, 364 U.S. 479 (1960), the Court made clear that absent some overriding administrative impossibility, an accommodation would have to be made to satisfy the plaintiff's religious needs.

The Fourth Circuit discussed the Barnett case and the basic doctrine at substantial length in Ross v. Blackledge, 477 Fed. 2nd 616 (4th Cir. 1973), where it concluded that a full evidentiary hearing should be held to determine whether and how a prison must "provide some form of alternative diet" to those inmates whose religious scruples inhibit them from eating the usual menu. The standards set by the Fourth Circuit was that the State Department of Correction was obliged to show "clearly" that "an adequate ration" was available to Muslim prisoners. (477 Fed.2nd at 619). That standard must govern here.

indicates that <u>mandatory</u>, not merely prohibitory, relief is often appropriate.

Though detenti on necessarily results in the forfeiture of certain rights and privileges commonly exercised in a free society, based upon what the Supreme Court has termed "a retraction justified by the considerations underlying our penal system," <u>Price v. Johnston,</u> 334 U.S. 266 (1948), courts have not hesitated to intervene where prison officials have unreasonably attempted to curtail the practice of religion by prison inmates. <u>Cooper v. Park,</u> 278 U.S. 546 (1964); <u>Walker v. Blackwell,</u> 360 Fed. 2d 66 (5th Cir. 1966); <u>Pierce v. LaVallee,</u> 293 Fed. 2d 233 (2nd Cir. 1961). Even those who have been convicted remain "persons" under the Constitution. M.G. Hermann and M.G. Haft, Prisoner's Rights Source Book, S.A. Bass, First Amendment Rights 70 and Improving Conditions in Pretrial Detention Facilities, 126 (1973), cited with approval in <u>United States of America, Ex Rel Manicone v. Corso,</u> United States District Court for the Eastern District of New York, Weinstein, D.J., 11/8/73, 73-C-1389.

In an instance such as this, where defendant seeks only "a modest degree of official deference to (his) religious obligation" <u>Barnett v. Rodgers,</u> <u>supra</u>, at 1003 the onus is to be placed upon the State to demonstrate the impediments that may stand in the way of accommodation of the defendant's observance of his dietary mandate have some compelling justification.

While it is the State's burden to show a compelling State interest when that interest is formented by trodding upon the First Amendment rights of an indivual, the task of the government does not stop there. The government must still show that there are no other means available to carry forth its purpose. A "statute which imposes a substantial burden on protected First Amendment activities,...must achieve its goals by means which have a 'less drastic' impact on the continued vitality of First Amendment freedome." (United States v. Robel, 389 U.S. 258, 268, 88 Supreme Court 419, 426 (1967).

> "(E)ven though the governemtal purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental liberties when the end can be more narrowly achieved." (Sheldon v. Tucker, 364 U.S. 479, 488, 81 Supreme Court 247, 252 (1960).

In a case such as this, with substantial First Amendment moment, the burdens and responsibilities of the government are crystal clear to wit to show an interest which is nothing short of compelling; to then couple with that interest means which are chosen so narrowly as to offer no less drastic an alternative to the offending action.

III

JEWISH RELIGIOUS, PHILOSOPHICAL, MORAL AND LEGAL SOURCES FOR THE DEMAND FOR KOSHER FOOD FOR JEWISH PRISON INMATES.

BACKGROUND

Advocacy on behalf of kosher food for Jewish inmates, had its most recent genesis with the incarceration of Avraham Hershkovits. While the Hershkovits case and the present one of Rabbi Meir Kahane are instances of Jewish prisoners who receive publicity, it goes without saying that the needs and demands of kashruth apply to all Jewish prisoners. As the memorandum on constitutional rights will show, the right to observe, and the freedom not to violate Jewish dietary laws is a constitutional right of the Jewish prisoner. It is most saddening to hear the government prosecutor state that Jewish inmates must accept the status quo; or when in Rome they must do as the Romans. Another variation of this argument is the pandora's box it creates with other religious groups. Moderate needs of 4,000 years of Jewish history are being penalized because of administrative inadequacy concerning these demands.

According to the bon mot, Tarryton smokers would rather fight than switch. In a serious sense, Jews have often chosen to fight than switch. Indeed, the example par escellance in the battle of religious freedom is that of Chanukah. Most Jews, who do not observe the kashruth laws, do not realize that the mighty Maccabees took to battle after the aged Mattathias slew the Hellenist because the latter attempted to force Mattathias to eat pig. The Book of Maccabees relates, "Nevertheless, many in Israel were firmly resolved in their hearts not to eat unclean food. They preferred to die rather than be defiled by food or break the holy covenant, and they did die". Book of Maccabees, Chapter I).

The subject of this presentation is to show, in capsule form, the religious, philosophical and moral basis of the Jewish dietary laws. Our sources will be the Bible, Talmud and the Code of Jewish Law, and latter day Jewish authorities.

The Jewish dietary laws are a fundamental part of the divine legislation and their observance has decisively moulded the collective character of the Jewish nation. It is an accepted principle of jurisprudence and legal philosophy that in dealing with the purpose or motive of a given law (ratio legis) one must bear two fundamental rules in mind. The first is that unless a code of law itself states the underlying idea of a law, any theory about that idea always remains conjecture. The other rule is that the binding force of a law is always independent of its ratio legis, whether directly expressed or assumed.

If this is true of laws which are man-made, it is all more so with a code of law which is of divine origin. The true relationship between the Laws of the Torah and their underlying ideas has been the subject of much deep thought by Israel's sages ever since the Revelation at Sinai, covering the periods of the Halakhic and Aggadic Midrashim, the Talmud, the Geonim, the mediaeval Halakhists, Jewish philosophers and mystics, the Hassidic thinkers of the later Middle Ages, the moralists of the Mussar movement, and those Jewish thinkers of the last century and of our own time.

> "There are three possible methods of approach in dealing with the underlying ideas of Jewish laws: the ethical, the mustical and the symbolical. In Talmud and Midrash, we find all three methods combined. Among later Jewish philosophers, Maimonides is the principal exponent of the ethical method; the Jewish mystics (Kabbalists) are, of course, mainly concerned with the mystical way of explaining the commandments; and the outstanding modern representative of the symbolical method is Samson Raphael Hirsch (1808-1888).
>
> The ethical interpretation of the laws is the simplest. It is based on the conception that all divine laws have one aim: holiness, i.e. the moral perfection of man. This aim is explicitly stated in the Torah: 'that thou remember and do all My commandments and be holy unto your God'. (NUM, XV, 40).

"According to the mystical exposition, the laws of the Torah have an effect not only on the character of the persons who observe them, but also on the harmony of the Universe. The effect of fulfilling a commandment extends, according to the mystical conception, to the furthest reaches of the Universe. Every Mitzvah (commandment) is thus an event of cosmic importance; and as the laws of the Torah are the means of establishing and preserving the harmony of the Universe, every observant Jew becomes a co-operator with God in the drama of history and the guidance of the world. This interpretation of our laws is common to all Jewish mystics from the Zohar down to the latest exposition of Hassidism.

The symbolical interpretation starts from the psychological experience that abstract ideas are not always the best educational means of influencing human behaviour. A symbol, i.e. a visible sign, representing an idea, has proved a much more effective way if directing human conduct than theories unreflected in any tangible form.

The Torah itself makes ample use of such symbols. Even the verse quoted above (NUM. XV, 40)which is uslally taken as the basis of the moral interpretation of our laws, is a symbol, Fringes. It is by looking at the Fringes that we are expected to "remember all the laws of God and do them". That the mere sight of fringes of wool as well as of other symbols can have such an effect on man, is in itself demonstrative of the import of symbolic representation. Samson Raphael Hirsch explained in this way many of our laws and observances, particularly Circumcision, Fringes, Phylacteies, the sacrifices and the Sanctuary. "The symbol is, of course, only a means to an end; and this end is again the attainment of holiness, that is moral autonomy." (Dayah Grunfeld, Jewish Dietary Laws).

It is interesting that one of the reasonf or goals of incarceration is rehabilitation, molding of character, teaching of discipline, and teaching one to respect the laws of society, including universal God given laws embodies in the latter, respect for the right and property of others, respect for the prisoner's own moral and self dignity; all of which will enable the prisoner to lead a more complete life upon release. The policy of the Bureau of Prisons runs counter to this in all respects, vis a vis kosher food, and besides the primary Jewish religious and American constitutional basis for their need to change policy, there exists psychological, sociological and social work ideas interwoven with Jewish tradition which demand redress to the present situation.

The Torah, or Jewish conception is that food is not only a means of keeping the body alive physically, but that it has an influence on the intellectual and spiritual makeup of the human personality. The partaking of food, therefore, has not only a psyciological, but also a moral and religious significance. According to prevalent conceptions about religion, it is mainly concerned with the "spiritual" side of man's existence, with prayer and worship in the House of God. The outward frame of a man's life, his so called wordly activities and especially such "trivialities" as food and drink have little to do with spirituality and man's moral advancement.

The Jewish attitude is different.

"Few people have given a thought to the strange pnehomenon that the holy tongue, the classical language of the Torah, has not even a word for religion. This seemingly strange phenomenon is very significant for the philosophy of the Torah and its attitude to life. The Torah does not use the word religion because to the Torah every facet of human life, even the smallest and apparently trivial, is potentially a sphere of religion. To set aside a part of life and call this the realm of religion is the very negation of the philosophy of the Torah. Indeed, it borders on blasphemy because it implies that there is a sphere of life from which God and His laws are excluded. In the world-view of the Torah, 'religion' should embrace the whole of life in its personal economic and social aspects. It is a fundamental religious error to try to 'localize' God in a house of worship or in a house of learning. To be religious does not mean primarily to pray, although prayer is an essential part of religion; nor is it enough to study the Torah unless its teachings are applied in all spheres of everyday life. To be religious means to the faithful Jew to conceive of all human activities as falling within one scheme, the character of which is determined by the all-embracing laws of the Torah. That is why we speak of Torat Hayim, the Torah of Life. The unity of life is as important an axion in the religious view of the Torah as the unity of God. Life is one and indivisible; and no aspect of life, individual or collective, devotional or commercial, is outside the rule of God and His law. A holy nation means in the philosophy of the Torah not a nation which is ruled by a priestly caste but a commonwealth where every home is a temple and every table an altar; where the fields and the meadows, the workshops and marketplaces, the offices, homes and kitchens, are just as much the scenes of divine service as the house of worship and the house of study. And that is why the laws of the Torah are not limited in their scope to what is usually called the 'religious' sphere but are concerned with the commercial and social life in the same manner as with prayer and character training. This is the meaning of the Scriptual passage quoted above: 'In <u>all</u> thy ways acknowledge Him' (PROV. III, 6) on which, in the view of the Jewish Sages, all the essentials of the Torah depend. (See BER. 63a).

To the superficial observer it seems that men who do not obey the law are freer than the law-abiding men, because they can follow their own inclinations. In reality, however, such men are subject to the most cruel bondage; they are slaves of their own instincts, impulses and desires. The first step towards emancipation from the tyranny of animal inclinations in man is, therefore, a voluntary submission to the moral law. The constraint of law is the beginning of human freedom, or in Rabbinic phraseology, 'None is free, except he who acts in accord with the law'. X(AB. VI, 2.) Thus the fundamental idea of Jewish ethics, holiness, is inseparably connected with the idea of law; and the dietary laws occupy a central position in that system of moral discipline which is the basis of all Jewish laws.

There is hardly a precept of the Torah which, no matter what its ultimate aim may be, does not also in some way teach a lesson in ethics, manners, morals, or good taste. This is especially true of the dietary laws. One of the chief lessons we can derive from the study and practice of these laws is an abhorrence of violence and cruelty.

'Since the desire of procuring good food necessitates the slaying of animals, the Law enjoins that their death should be the easiest possible,' writes Maimonides.* In the Commentary to the Pentateuch of Nachmanides we find the following beautiful and significant passage: 'The reason for ritual slaughter is that the Torah forbids the infliction of useless pain on any living being. That is why before killing an animal the benediction 'Blessed art thou, O Lord, who has hallowed us with his commandments and commanded us concerning ritual slaughter,' must always be recited.'**

* Maimonides, Guide, III, 48.
**Nachmanides, Commentary to Leviticus.

"The Jewish method of slaughter is the most humane.

The Torah insists that no act of cruelty be committed against an animal also when it is not slaughtered, but otherwise intended for food. Thus a limb torn from a living animal may not be eaten. The prohibition is calculated to minimize the probability of the commission of this atrocity, for it is usually when one is exceedingly hungry and wishes to eat at once that one may resort to such cruelty. If one is not permitted to eat it, it is less likely that he will tear the limb merely for sport. Even the feelings of an animal must be spared, and a 'mother and its young may not be slaughtered on the same day' (Lev. XXII, 28). The reason for this restraint is to make it impossible to kill the young in the sight of the mother. 'For the pain of animals under such circumstances is very great. There is no difference in this case between the pain of man and the pain of any other living being, since the love and tenderness of a mother for her young is not a product of reason but of the imagination; and this faculty is present not only in man but in most living beings.' (Maimonides, Guide for the Perplexed, Part II, Chapter XLVIII).

Man should try to keep cruelty as far out of his sight as possible, for seeing leads to imitation. Hence the wild beasts which prey viciously upon one another, and birds of prey such as the hawk or the vulture, may not be eaten. 'The ossifrage,' writes Philo, 'is a cruel bird, dropping its young from a great height to dash them on the stones below; the pelican preys on its own flesh; hence they are forbidden.' Insomuch as these birds and animals can hardly be domesticated, the only reason one would keep them about would be for food. The prohibition of their use for this purpose is calculated to remove them entirely from sight. It is also shameful to eat a bid boiled in its mother's milk. There is a kind of cruelty in the act akin to killing young before the eyes of the mother, or taking the birds from the nest without first sending the mother away. (Ibn Ezra to Exodus XXIII, 19). The real concept of cruelty does not lie in the mere infliction of pain. That is but a specific example of cruelty. There is a divinely

> established order in the universe. To divert the natural course of things into improper channels, to interfere with natural processes, or to forcibly join root and branch which God separates, is cruelty."

[Even though an animal may belong to the class designated as fit for food, it may not be used in all cases. An animal prematurely born cannot be rendered edible by slaughter. Hence, unless it is known with certainty that the young were carried the full number of months, it is forbidden to slaughter them until the eighth day after their birth, when by virtue of their survival they may be presumed to be maturely born, without further investigation. (Sabbath 136; Hullin 51b; Y.D. 15, 2. In the instance that the father of the young is known, he too may not be slaughtered on that day. (Hullin ibid.; Y.D. 16, 2. This is a rabbinic ordinance.) If by chance or design it should happen that parent and young were killed on the same day, the one killed last should not be eaten by the slaughterer until the morrow, so that he may not profit by his haste. Tur Y.D. 16. An animal on the verge of death cannot be made fit to eat by killing it in the prescribed manner. Hullin 37a. In slaughtering a sick animal its reflexes after the cut should be observed. In a cow or a beast, flexing of the flreleg or hindleg is considered sufficient evidence of vitality to validate the killing; but in sheep or goats the mere stretching of the foreleg is not sufficient indication of life. (Ibid. Avodah Zarah 16a Y.D. 61.) If no reflexes are observed the animal is considered as carrion. (Ibid. Avodah Zarah 16a Y.D. 61). Although it is legally permitted to eat flesh of an animal that has shown the marks of vitality upon slaughter, pious people refrain from eating anything which has been killed out of fear that delay in its slaughter would result in an early natural death.] (Y.D. ibid., Ramah).

> "The natural state of the human being is what psychologists call 'proper adjustment to the environment.' The infliction of pain causes a maladjustment of the animal, and hence is forbidden as cruelty. Likewise, seething a kid in its mother's milk is forbidden because it is an unnatural process, a mingling of the milk intended by the mother for the child with the flesh of the mother - a mixing of 'root and branch'. (Abarbanel, ibid.) The Jewish definition of cruelty extends the concept to the vegetable world as well. It is just as cruel to plant two kinds of seeds together or to graft two kinds of trees together, as to force two species of animals to enter into sexual connection. All of these cruelties are equally forbidden by the Torah. In order that the fruit of cruelty be not enjoyed, it is forbidden to use the fruit which grows from a crossbrrreind of the grapevine with grain. Young must be left seven days with the mother before they may be taken away and offered as a sacrifice to the Lord (Lev. XXII, 27). Likewise, the tree must not be robbed of its fruit the first three years; but on the fourth year the fruit may be eaten at a joyous celebration before the Lord (Lev. XIX, 23-25). Thus the dietary laws serve to inculcate a host of moral lessons, especially with reference to abstinence from cruelty." (Ibid. Grunfeld).

What deeper and more meaningful basis for effecting good behavior! Adherence to Jewish dietary laws, and understanding what they mean, is a form of behavior modification. Besides violating the Jewish prisoner's religious and civil rights, the abrogation of Kashruth observance feeds into all behavior models that the prison system and society is attempting to combat.

The first law in human history was a dietary law. (Genesis II, 15-17). This fact is significant in contemplating the nature of the dietary laws, and the nature of all Law as an instrument for the raising of man from mere sensuality to his human calling. Being composed of body and soul, of a transient and an eternal element, there must always be a tension in man which can lead to a permanent diachotomy and a plit in the human personality. The Jewish task is to establish the inner harmony and the religious reality of man. Since man is neither only soul nor only body, but both joined to each other, both these constituent elements within man must be related to God, each in a manner adequate to its own nature. The Mitzvah, the deed prescribed by religious law, is the means of overcoming the dualism of man's nature and creating harmony within him.

In man's quest for a criterion by which to discriminate between good and evil, he needs the guidance of God. The moral conscience embedded in each human breast which may be called the inner Revelation is in itself no sure guide. It needs as its compliment the outer Revelation which was given to mankind as a whole in the universal code of the Seven Noahide Laws, and to Israel as God's chosen instrument for the development of Mankind, in the Sinaitic laws, the Written and Oral Law.

The historic mission of the Jew in the world which demands the preservation of the identity of the Jewish people, is safeguarded by such laws as those regulating Kashruth.

It is impossible here to present all or even a representative amount of the myriad of practical details and observances relating to the laws of Kashruth. Rather, we will present general categories and give various examples which will indicate the obvious, that food prepared in its present manner in any prison kitchen, is non-kosher, and that Jewish Law, forbids the Jew to partake of such food.

The dietary laws may be classified into the following categories:

I. Which animals are permitted for food; which are not.

II. Which parts of the animal are permitted; which are not.

III. Conditions under which permitted animals are prohibited.

IV. Method of slaughtering animals which should serve as food.

V. Food-substance compounds which may not be eaten.

VI. Relationships of mixtures of the permitted and the forbidden, and the vessels which have absorbed forbidden food.

Before a knife is used for killing an animal, it must be examined along both edges. The examination is made on the fingernail, which is cartilagenous like the windpipe, and on the flesh of the finger, which is soft like the oesophagus. If the slightest dent is observed, the knife is not used (Tractate Hullin 13a; Yoreh Deah 18, 9). An egg upon whose yolk a blood spot occurs should not be used (Yorek Deah 68). The Torah is very insistent in its demands that no blood whatsoever be eaten. The first step toward the removal of the blood is the excision of a number of larger veins. If the flesh should be boiled without the removal of these veins, the contents of the entire pot, and the pot itself, become "trefah" or unfit (Yoreh Deah 65). The meat should be soaked for about a half hour (Yoreh Deah 69). Soaking too long should be avoided, the meat soaked twenty four hours is considered as having been pickled with its blood and becomes inedible (Yoreh Deah, ibid.) Neither very fine nor very course salt should be used. Every side of the meat should be salted. Should it happen that meat was salted on one side only, a competent rabbi should be consulted. If this was not noted until after cooking, the whole contents of the pot are unfit for use (Yoreh Deah 69; 3,4). Separate pots should be kept for cooking meat and milk respectively (Tractate Avodah Zarah 766; Yoreh Deah 93, 1). Meat cooked in a pot in which milk had been cooked, is inedible. The pot may not be used again either for milk or meat until purified (Yoreah Deah ibid.).

Vegetables cooked in a milk pot unused for twenty-four hours previously, into which a meat spoon used within twenty-four hours has been thrust, should be eaten in meat dishes, and the pot purified before further use. In case the pot has been used within twenty-four hours, but the spoon has not been used, the vegetables should be eaten from milk dishes, and the spoon set aside (Y.D. 94, 1). Milk and meat dishes should not be washed together. If the two, both used within twenty-four hours and soiled with fat and milk, are washed together in hot water, they mutually make each other trefah (unfit) and must be purified (Y.D. 65, 3). Bread should not be kneaded with milk, lest it be eaten with meat, nor with fat, lest it be eaten with cheese. If this rule is overstepped, the bread should be destroyed, and not used with either. (Tractate Pesachim 30a; 76b; Y.D. 67, 1; 97, 3).

It is self evident based on the above small abstraction of Jewish dietary laws, that an observant Jew cannot eat or drink anything hot in a prison, certainly not if the utensel is not physically clean and unused for twenty four hours. No meat products may be eaten. Vegetables cooked <u>alone</u> in prison pots are <u>inedible</u>. Baked goods prepared in utensils previously used to bake non-kosher items, washed with non-kosher utensils, or containing no non-kosher ingredients, but using non-kosher grease, are unfit.

CONCLUSION

The Jewish inmate who eats almost nothing is not on a hunger strike. On the contrary the Jewish imperative is to care for the body. It is prison officials who will not provide this basic human need, in conjunction with Jewish law as mandated by the Bill of Rights, to the prisoner. If a Jew goes to Yankee Stadium and must discipline himself not to partake of a hotdog, and go hungry, that is his right. He can either bring his own kosher food, or not attend. Glaringly this is not the case in prison. One cannot bring his own food, cannot leave, but nevertheless is asked to violate a 4,000 year old imperative of Jewish tradition. It is clear that one must violate these laws, if his life is in danger. This means the court and the prisons are demanding this of the Jewish inmate. Prison, however, does not dictate Jewish religious or moral practice. One of the great mediaeval rabbis, the Maharam M Ruttenberg, was put in jail and a large ransom asked for him. The community was willing to pay this. Refusing to set a precedent and cause this to reoccur, the rabbi chose to remain in jail until his death many years later. The rabbis of the Talmud foresaw the criticism on dietary laws thousands of years ago when they said that "the evil inclination in man is turned against the dietary laws, and non-Jews find them strange" (cf Sifra on Lev. XVIII; 4, and Yoma 67b).

IV
REQUIREMENTS FOR STUDY, PRAYER, SABBATH AND HOLIDAY OBSERVANCE.

SOURCES

(1) It is a Biblical precept that a Jew engage in Torah study both by day and by night (Maimonides, Laws of Torah Study, 1, 8).

(2) It is a Biblical precept to pray daily. One should not pray individually as long as he can pray with a minyon (quorum of ten). He who does not pray with the congregation is considered a bad neighbor (Maimonides, Laws of Prayer; 1,1,8,1).

(3) Moses instituted public Torah readings on Mondays, Thursdays, Saturdays, New Moons and on Holidays (Orach Chaim; 139, 1,2). It is a commandment to provide a proper place for the Torah Schroll (Maimonides, Laws of the Torah Scroll; 10,10).

(4) It is a Biblical commandment to sanctify the Sabbath and Holidays, over a cup of wine, when it begins and when it ends (Maimonides, Laws of the Sabbath, 29). Biblical, Talmudic and Rabbinic Law require a Jew to break bread over two whole bread twists (Challot), or two whole matzoh. This is required for all three Sabbath meals (Aruch Hashulchon, 244, 1).

(5) A Jew may not perform on the Sabbath any of the thirty-nine proscribed categories of work. This includes writing, turning on and off of electric lights, carrying from building to building, traveling by car, heating food on the stove not properly afixed before the Sabbath and opening cans -- this should be

done before the Sabbath ("The Sabbath", Dayan Dr. I. Crumfeld).

SUMMARY

Judaism is not a religion of ignorance. The greatest commandment is the imperative to study Torah. Therefore, a full range of Jewish books and study time must be made available. At a minimum, Sabbath and Holiday communal prayer, with the reading of the Torah Scroll is vital. A separate room must be designated as a Jewish chapel. An ark must protect the Torah scroll. The Sabbath has special prayers, ritual foods and beverages, and a prohibition from certain types of labor. Religious articles for daily use are the prayer shawl and phylacteries. The other holiday observances dictate the following: blowing of the ram's horn, the use of the citron and palm branch, eating in a succah (booth), lighting of the Chanukah menorah, reading the Megillah scroll, eating matzoh and abstaining from all leaven bread products. There are five fast days, in addition to Yom Kippur. Prayers are recited three times daily; morning, afternoon and evening. The head must be covered at all times. During major national mourning periods, one may not shave.

INFRACTIONS

Recently a rabbi was put in solitary at Allenwood, for refusing to turn off a light on the Sabbath. At Allenwood, two years ago, Jews were required to pray in a Christian chapel. Four years ago Avroham Hershkovits was put in solitary, and then forcibly shaven; he had refused to shave during a Jewish period of national mourning. For a brief time at Danbury, Mr. Hershkovits was put in solitary, for refusing to remove his skull cap, while working in the kitchen.

NOTE: We are presently in a Jewish Holiday of mourning which continues into this month of April. The Defendant Rabbi Meir Kahane cannot shave during this period.

There are several Holy Days which continue in the summer. The beginning of Rosh Mashano is on or about September 6, 1975.

CONCLUSION:

For the foregoing reasons, this Court should enter an order reiterating and mandating the items outlined in its order of March 17, 1975, i.e. that the United States and its agents be directed to make available to the defendant, Rabbi Meir Kahane, kosher food, acceptable to the Orthodox Jewish tenets, and if there is not a minyon available in the institution and if there be a reasonably close synogogue that the defendant be allowed to go to religious services there.

Dated: April 11, 1975

Respectfully submitted,

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	71-Cr-479
- against -	:	
MEIR KAHANE,	:	
Defendant.	:	

SUPPLEMENTAL MEMORANDUM OF LAW

Submitted by,
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REGULATIONS DESIGNED TO DEFEAT THE PRACTICE OF JEWISH ORTHODOXY

There is no question that the First Amendment takes precedence over all regulations which are found to be in conflict with it. Cantwell v. Connecticut, 310 U.S. 296. Therefore it is the First Amendment standards which we must first look to in determining whether the defendant's right of religious freedom will be violated by the Bureau of Prisons.

The First Amendment standards indicate that any incidental burden on the petitioner's exercise of his religion can only be justified by a compelling state interest in the regulation of a subject within the state's power to regulate. Sherbert v. Verner, 374 U.S. 398, 403; Wisconsin v. Yoder, 406 U.S. 205, 220.

Therefore the final and last argument proposed by the government might be that the Bureau of Prisons' attitude has not been contravened by the First Amendment due to a balancing of the particular values. We contend that in striking this balance one must look at three important elements: (1) the importance of the secular value underlying the regulation; (2) the degree of necessity that the regulation bears to that value; and (3) the impact that an exemption for religious reasons would have on the program carrying out the regulation. Giannella, Religious Liberty, Non-Establishment and Doctrinal Development, Part 1., The Religious Liberty Guarantee, 80 Harvard Law Review, 1381, 1390.

Obviously, the position taken by the government severely violates the constitutional rights of the petitioner pursuant to the First and Eighth Amendments.

Cantwell v. Connecticut, 310 U.S. 296, 309.

The solution to the problem presented herein is apparently answered in Sherbert v. Verner, 374 U.S. 398, 403, 404, where Mr. Justice Brennan speaking for the Court said:

> "Plainly enough appellant's conscientious objection to Saturday work constitutes no conduct prompted by religious principles of a kind within the reach of state legislation. If, therefore, the decision of the South Carolina Supreme Court, is to withstand appellant's constitutional challenge, it must be either because her disqualification as a beneficiary represents no infringement by the state of her constitutional rights of free exercise, or because any incidental burden on the free exercise of appellant's religion may be justified by a 'compelling state interest in the regulation of a subject within the state's constitutional power to regulate... (NAACP v. Button, 371 U.S. 415, 438).
>
> "Here not only is it apparent that appellant's declared ineligibility for benefits derives solely from the practice of her religion, but the pressure upon her to forego that practice is unmistakeable. The ruling forces her to choose between following the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship."

The United States Supreme Court stated in Wisconsin v. Yoder, 406 U.S. 205, 214:

> "It follows that in order for Wisconsin to compel school attendance beyond the 8th grade against the claim that such attendance interferes with the practice of a legitimate religious belief, it must

> appear either that the state does not deny the free exercise or religious belief by its requirement, or that there is a state interest of sufficient magnitude to override the interest claiming protection under the free exercise clause."

Here, no one should force an individual to go against the very basic precepts of his religion because it may cause a convenience to the state. "Government imposition of such a choice" clearly would cause the defendant to become extremely ill and would put upon his free exercise of religion "the same kind of burden...as would a fine imposed against" him for his mode of worship (see Sherbert v. Verner, supra, page 404).

The burden attempted to be placed upon the defendant's exercise of religion cannot be justified by any compelling state interest which would cause the defendant such harm, pain and suffering. Furthermore, obviously an interference with his First Amendment rights.

In view of what has been stated heretofore there cannot be a conclusion which will allow for a "balance" because if one looks at the particular values it becomes a difference between life and possible physical and moral death to the defendant. The standard applied is the "compelling state interest". Under this standard Rabbi Kahane should not only receive kosher food but should be allowed to pray pursuant to the dictates of his religion.

The reason for kosher food at this point should be most obvious.

The allowance of proper prayer is not in violation of a compelling state interest - due to the fact that it has been conceded by all that the rabbi is to be sent to a minimum security institution and is to receive privileges of going into the "town". Therefore, the reason for the refusal of the Bureau of Prisons to follow the dictates of this Court's orders is obviously arbitrary, capricious and a violation of the defendant's constitutional rights.

Under the compelling state interest test, even if there is a possibility that the practice of religion might encumber the state "it would plainly be incumbent upon the...(the petitioner) to demonstrate that no alternative forms of regulation would combat such abuses without infringing First Amendment rights" (Sherbert v. Verner, 374 U.S. 398, 407, supra).

The appended affidavit of Ben B. Weintraub indicates the simplistic process whereby kosher food has been provided.

The furlough program allows petitioners, prisoners and defendants out for the purpose of rehabilitation, etc. Presently, the defendant Rabbi Meir Kahane is at a half-way house where he is able to leave for meals and to pray. How would his sudden incarceration violate the entire prison system - if he were allowed to leave so that he could properly practice his religion?

Under the circumstances of this case the attitude of the government is outwardly outrageous. However, the law is clear and the defendant should be allowed what he and others have and are receiving - (1) kosher food and (2) supervised furloughs - if necessary for the purpose of practicing his religion.

> "It is basic that no showing merely a rational relationship to some colorable state interest would suffice, in this highly sensitive constitutional area, '(o)nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation' (Thomas v. Collins, 322 U.S. 516, 530)." Sherbert v. Verner, supra, page 406.

Here, as in Sherbert, "no such abuse or danger has been advanced" (supra, page 407).

The First Amendment forbids the state not only to "avoid legislating against a constitutional exercise of liberties but also forbids the state to penalize the free exercise of religion." Sherbert v. Verner, supra, 406. But it also denies to the State the right to say what is a cardinal principle and what is a subordinate principle of the defendant's religious faith. (See West Virginia State Board of Education v. Barnette, 319 U.S. 624, 642.

> "If there is any fixed star in our constitutonal constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." (West Virginia State Board of Education v. Barnette, supra, page 642).

It is barbaric that the government desires to cause an individual further pain and suffering other than the deprivation of being from his family - as a result of his incarceration. It is unrealistic, unconstitutional and un-American to indicate that a man can be further punished because he has certain strict religious beliefs. Especially, since his beliefs and his practice of religion can be easily provided for by the state. Note that all New York City [redacted] institutions, including prisons, provide Kosher food for residents, and that Federal prisons provide Kosher food for inmates on holidays.

Yours, etc.,

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----------------------------------x

UNITED STATES OF AMERICA

-against-

MEIR KAHANE,

Defendant.

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MEMORANDUM OF LAW

Submitted by: BARRY IVAN SLOTNICK
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PRELIMINARY STATEMENT

On February 21, 1975, this Court found the above-named Defendant to be guilty of the crime of probation violation and sentenced Rabbi Meir Kahane to one year of incarceration. On March 17, 1975, an application was made before this Court requesting that an order issue granting the Defendant his religious rights pursuant to court order prior to commencement of his sentence. That request was granted - without objection by the Government. During that proceeding, the Government indicated to the Court that the Bureau of Prisons had apparently designated Allenwood, Pennsylvania as the site for the actual sentence. (Hearing of March 17, 1975 - page 5)

It was further indicated during that hearing that counsel for the Defendant contemplated a further formal application with regard to the Defendant pursuant to Rule 35 of the Federal Rules of Criminal Procedure - no one objected. (Page 5, Id.)

The Court further stated:

> "If there are any problems with respect to his dietary requirements, you will get in touch with the Court at once, and we will make arrangements, but the Warden is to be kept informed that he does have these dietary requirements and that as a practicing Rabbi, if there is not a Minyon available in the Institution, and if there is a reasonably close Synagogue, he will be allowed to go to attend services there."

The Government did not object, and in the true spirit f fairness, First Amendment and Eighth Amendment awareness, did not object. On March 17, 1975, a commitment issued incorporating and mentioning the Court's orders. Pursuant to the orders of the

Court, counsel contacted officials of the United States Bureau of Prisons and was informed that the Bureau of Prisons would not provide the means by which the order of the Court could be carried out. Immediately, upon receiving this information, counsel notified the United States Attorney's Office and the Court, and requested a further hearing - as a result of that hearing, this Court, on April 4, 1975, continued the Defendant's incarceration at a Community Treatment Center and ordered that he be allowed out to eat meals and attend religious services.

Thereafter, on April 18, 1975, a proceeding was held in which the Government questioned this Court's jurisdiction over the Defendant. To that issue, this brief is addressed.

JURISDICTION OVER THE
DEFENDANT LIES.

The Court has jurisdiction over the person, body and sentence of Rabbi Meir Kahane pursuant to Rule 35 of the Rules of Procedure in the Federal Courts - Criminal Proceedings; mandamus; injunction; the First and Eighth Amendments of the United States Constitution; through various doctrines of equity; and under the Equal Protection Clause of the United States Constitution.

Rule 35 of the Federal Rules of Criminal Procedure for District Courts indicates that:

> "The Courts may also reduce a sentence upon revocation of probation as provided by law.
>
> "The third sentence has been added to make it clear that the time limitation imposed by Rule 35 upon the reduction of sentence does not apply to such reduction upon the revocation of probation..." Advisory Committee on Criminal Rules of the Judicial Conference of the United States: 5 Orfield 35:5

It is interesting to note, that in referring to the above-mentioned sentence and Footnote 8 Wright, on Federal Practice and Procedure states:

> "Eighteen USC, Section 3653 authorizes reduction of sentence after revocation of probation." Page 575

Addressing himself to this issue, Chief Judge Becker of the United States District Court for the Western District of Missouri in United States of America v. Fitzgerald, 292 Fed.Supp. 360 (1968), said that after a revocation of probation, a defendant may move with regard to his sentence, including reduction, pursuant to Rule 35. See also, United States v. Ellenbogen, 390 Fed.2d 537, (Sec. Cir., 1968).

Furthermore, it is indicated that the memoranda submitted with regard to the Constitutional aspects of this application further give the Court jurisdiction to overturn a regulation of the Bureau of Prisons that is not in conformity with the court order. Counsel has submitted memorandum with regard to the First and Eighth Amendment question, and it is contended herein that this Court's order which apparently is in conflict with either the regulation or policy of the Bureau of Prisons is proper and appropriate in that the aforementioned position of the Bureau of Prisons is an unconstitutional invasion of the Defendant's First and Eighth Amendment rights. Furthermore, we allege that the Defendant is being denied equal protection of law with regard to his specific proposition. Especially, in view of the fact, in the past, due to political commitments, some prisoners have received kosher food. It is apparent that in this situation and circumstance, that Rabbi Kahane will not receive the effect of this Court's order, nor its spirit, unless the Court specifically moves to enforce its own order. Specifically, at this time, his aforementioned constitutional rights are being violated. He is presently incarcerated and is not being supplied kosher food by the Bureau of Prisons. In fact, the Bureau of Prisons has further refused to accept kosher food for the purpose of feeding Orthodox Jewish prisoners. It was confirmed by an Administrative Assistant at the Federal House of Detention on West Street that frozen kosher meals would not be received as a matter of prison policy,

["as a matter of prison policy" - The New York Times, 4/23/75.]

Therefore, the Government's position that the application of the Defendant is premature is incorrect. The Defendant is incarcerated, is not being supplied kosher food by the Bureau of Prisons, has been denied that application by the Bureau of Prisons, and kosher meals were rejected by the Bureau of Prisons. Furthermore, it is noted to this Court that it appears that this policy is selective rather than constant. In the past, in at least one instance, the Bureau of Prisons got a contract for kosher food, and provided one defendant with kosher food. In another instance, a Rabbi was allowed the right to have kosher food brought into him. The selectivity of this policy which is presently affecting the Defendant, should be resolved and eliminated. Therefore, under the aforementioned constitutional grounds, the Defendant has a right to practice the dictates of his religion.

With regard to the designation of a minimum security institution, the Government designated Allenwood pursuant to the normal recommendation of the Court. (It is my belief that the designation of Allenwood came before the recommendation of the Court.)

The equity doctrines of mandamus and injunction, at this point, would certainly lie, since the Defendant is an aggrieved individual, seeking redress. Fulwood v. Clemmer, 295 Fed.2d 171, (1961); see also 85 Lawyers Edition 1036 citing McNally v. Hill, 293 U.S. 131, together with the compendium of cases with regard to the right of prisoners to proceed under various methods to appropriately redress wrongs. The United States Attorney's Office at this time, has received ample notice and is representing the authority of the Bureau of Prisons.

It is further expressly indicated that the doctrine of waiver and estoppel should be invoked against the Government with regard to this situation - especially since a fair, honest, and reasonable consent was given to the original applications made on behalf of the Defendant.

In another proceeding, entitled United States of America v. Smilow, the Government proceeded on a hearing with regard to the availability, necessity and applicability of kosher food, surrounding circumstances rather similar in nature to this one. The hearing was begun, and is presently being continued.

Furthermore, having sentenced the Defendant and indicated that he is to receive kosher food and the right to properly pray, the Court would itself be inflicting cruel and unusual punishment upon him by disallowing its own order. Any modification in a sentence upon the Defendant herein, could only be accomplished through the use of Rule 35 and the District Court should not be able to increase a sentence imposed, nor disallow the spirit of what it thought to be, and is a proper sentence. United States v. Welty, 426 Fed.2d 615 (1970). If this Court were to find that it does not have jurisdiction, or that it would have to change the commitment, it would actually be increasing the Defendant's sentence, and would be acting in a cruel and unusual manner as to him, and treating him unfairly and improperly. At a minimum, the Defendant must be maintained with kosher food by the Government, allowed to pray properly, and if the Government will not provide him with these proprieties, he must be released.

The Bureau of Prisons has further been involved in the allowance of prisoners to practice religious freedoms, in that they have established in the past, non-meat meals for Fridays, church services and special furloughs during holidays. Furthermore, the mechanics of kosher food are so simple that it would be no burden upon the Bureau of Prisons - this is not to suggest that the burden, if there were any, would overwhelm the First Amendment. Furthermore, kosher food is generally available during holidays. The strange selectivity under the entire circumstances must be resolved by this Court at this moment due to the fact that there is an aggrieved individual before it. The action of the Bureau of Prisons is at a minimum, arbitrary and capricious. Sutton v.

Ciccone, 292 Fed.Supp. 374 (1968 W.D.Mo.); Accord Peck v. Ciccone, 288 Fed.Supp. 329 (1968 W.D.Mo.); Cagle v. Ciccone, 308 Fed.Supp. 1122 (1969 W.D.Mo.).

> "The discretion of the Attorney General under the Statute [4082], although commodius, is not unbridled. The place of confinement must be suitable and appropriate, and a determination by the Attorney General in an extreme case, could be found to be arbitrary and capricious. Rodriguez v. United States, 409 Fed.2d 529 (First Cir., 1969). See also Lawrence v. Willingham, 373 Fed.2d 731 (10th Cir., 1967).
>
> There is unquestionably the circumstances and situation presented herein where this Court must undertake to review the refusal of the Bureau of Prisons to obey an order of this Court, thereby creating an aggrieved prisoner with a present complaint. There is no question that under these circumstances the nature and condition of a prisoner's confinement must be examined. Ex Parte Hull, 312 U.S. 546, 549 (1941); Collin v. Reichard, 143 Fed.2d 443, 445 (C.A. 6, 1944); Miller v. Overholser, 206 Fed.2d 415, 419 (1953); Fulwood v. Clemmer, 295 Fed.2d 171 (1961).

The exercise of discretion of the Attorney General in not obeying the mandates of the court order, nor following the suggestion or spirit of the court's order, and flatly refusing to reconsider its policy with regard to kosher food, is obviously an exceptional circumstance which not only appears to be selective, but arbitrary and capricious, mandating proper review by this Court. The argument that Rabbi Kahane is presently receiving kosher food is specious, especially in view of the fact, that as a result of his incarceration, the Government is not providing him with kosher food, and therefore, he is aggrieved - especially, since it is the obligation of the Bureau of Prisons to fulfill the needs of a prisoner.

The 4th Circuit has reviewed the situation of prisoners' rights, and indicated that it would not rely upon the "niceties of the procedural rules" in considering petitions, and have treated such petitions as applications for injunctive relief, rather than the accepted and oft-used habeus corpus application.

Other courts have reviewed prisoner denials pursuant to petitions in the nature of mandamus. Fulwood v. Clemmer, 295 Fed.2d 171.

Generally, applications are made when the grievance commences. Therefore, the need for court action in this situation at the present, because the grievanceis real and true at the present. To suggest that a prisoner must wait until he be irreparably injured is at least specious. When one has noted that his rights are being violated, he should have availability to the Courts at the present. When one has noticed that his rights will be violated, he should also have rights to approach the court to review the policy as it affects him - so as to avoid irreparable or other injury.

Other courts have listened to prisoner complaints through the use of declaratory relief, together with injunctive relief as brought forth by the Civil Rights Act - specifically

Section 1983. Cox v. Turley, 16 Criminal Law 22 33 (6th Cir. - 11/22/74) .IN The aforementioned matter, an evidentiary hearing, was ordered as a result of the allegation of prisoner rights violation pursuant to the Eighth Amendment to the Federal Constitution.

> "Punishment which shocks the most fundamental instincts of civilized man, Francis v. Resweber, 329 U.S. 459, or violates the evolving standards of decency that mark the progress of a maturing society, Trop v. Dulles, 356 U.S. 86, 101, is prohibited by the Eighth Amendment..." 16 Criminal Law 2233, 2234 Id. (Emphasis Ours)

It is to be noted in passing that the House of Representatives has presently before it in the Judiciary Committee a bill labeled H.R. 2803 which states the following:

> ". . . food preferences, based on religious or ethical grounds, shall be honored."

Therefore, an apparent study with regard to this issue indicates that there may be at some future date a codification of what we seek herein. Certainly, a responsible representative who submitted this bill through the Committee on the Judiciary, would not place something before it which would violate any compelling state interest.

The present case and controversy brought before this Court involves an aggrieved individual who is not receiving what he should be, either through administrative policy or review and order by the Judiciary. The evolving standards of decency that help determine whether a punishment is cruel and unusual is a determinative factor herein. As the memoranda submitted to this Court on April 11, 1975 indicates, the denial of kosher food and freedom to properly pray would be inconsistent with the evolving standards of decency and therefore, would subject the Defendant to punishment that is cruel and unusual. Presently, the attitute of the Bureau of Prisons in this selective refusal to provide kosher food - or even to accept kosher food, is an abrogation of not only constitutional principles, but of their obligation with regard to proper prisoner rights. (36 Albany Law Review 416 - Religious Freedom In Prison.)

In conclusion, the apparent policy, decision and regulation of the Bureau of Prisons in its enactment violates the spirit and tenure of all of the decisions decided in Furman v. Georgia, 408 U.S. 238 (1972).

Respectfully submitted,

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STATE OF NEW YORK)
: SS.
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 1 day of Oct. , 1975 deponent served the within Appendix upon XXX U.S. Atty. East. Dist. of NY

attorneye(s) for

Appellants

in this action, at

225 Cadman Plaza East, Brooklyn, N.Y.

the address(es) designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

Robert Bailey
ROBERT BAILEY

Sworn to before me, this
1 day of Oct. , 1975

William Bailey
WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1976